

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

LIFE CARE CENTERS OF AMERICA,
INC. AND SOUTH HILL OPERATIONS
LLC d/b/a LIFE CARE CENTER OF
SOUTH HILL,

Defendants.

CIVIL ACTION NO. 2:18-cv-01411-RAJ

CONSENT DECREE

I. INTRODUCTION

1. This action originated when Nair Danielle Parsons (“Ms. Parsons”) filed a charge of discrimination dated July 18, 2016 with the Equal Employment Opportunity Commission (“EEOC” or “Commission”). Ms. Parsons alleged that Life Care Centers of America, Inc. and South Hill Operations, LLC d/b/a “Life Care Center of South Hill” (“Defendants” or “Life Care”) discriminated against her when they denied her request for a pregnancy related work restriction

1 for her Certified Nurse Aide ("CNA") position at the South Hill, Puyallap facility on June 15,
2 2016, and then constructively discharged her.

3 2. On June 7, 2018, the EEOC issued a Letter of Determination with a finding of
4 reasonable cause to believe that Defendants had violated Title VII of the Civil Rights Act of 1964,
5 as amended by the Pregnancy Discrimination Act of 1978, ("Title VII" and "PDA," respectively),
6 when they denied her pregnancy related work restrictions on June 15, 2016, and then
7 constructively discharged her the next day by placing her on involuntary unpaid leave. Thereafter,
8 the matter moved into conciliation which was unsuccessful.
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10 3. The Commission filed its Complaint on September 25, 2018, in the United States
11 District Court for the Western District of Washington. The Complaint alleges that Defendants
12 discriminated against Ms. Parsons based on her sex (female/pregnancy) when they: (a) denied her
13 pregnancy-related work restriction of not lifting more than fifteen (15) pounds as a CNA on June
14 15, 2016; and (b) constructively terminated her as a CNA when she was involuntarily placed on
15 unpaid, indefinite leave on June 16, 2016. The EEOC sought monetary and non-monetary relief
16 for Ms. Parsons.
17

18 4. The parties want to conclude fully and finally all claims arising out of the EEOC's
19 Complaint and Ms. Parsons' discrimination charge filed with the EEOC. The EEOC and Life Care
20 enter into this Consent Decree to further the objectives of equal employment opportunity in Title
21 VII and the PDA.
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23 II. JURISDICTION AND VENUE

24 5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,
25 1343 and 1345. This action is authorized and instituted pursuant to sections 706(f)(1) and (3) of

1 Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. section 2000e *et seq.* ("Title
2 VII") and section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

3 6. The employment practices alleged to be unlawful were committed within the
4 jurisdiction of the United States District Court for the Western District of Washington.

5
6 **III. SETTLEMENT SCOPE**

7 7. This Consent Decree is the final and complete resolution of all allegations of
8 unlawful employment practices contained in Ms. Parsons' discrimination charge, in the EEOC's
9 administrative determination, and in the EEOC's Complaint filed herein, including all claims by
10 the EEOC and Defendants for attorney fees and costs.

11 8. No waiver, modification or amendment of any provision of this Consent Decree
12 shall be effective unless made in writing and approved by the Parties to this Decree, and any
13 substantive change, modification or amendment of any provision of this Consent Decree shall also
14 require approval by the Court.
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17 **IV. MONETARY RELIEF**

18 9. In settlement of this lawsuit, Defendants agree to pay Ms. Parsons the total
19 amount of \$170,000.00 within twenty-one (21) business days of the date of entry of this Consent
20 Decree by delivering the following to Ms. Parsons's home address by certified mail with proof of
21 delivery:
22

23 a. A check in the amount of \$8,200 which constitutes back pay for Ms. Parsons.

24 The check shall be reduced by any applicable deductions for the employee's portion of
25

1 FICA and applicable federal and applicable state income tax withholdings related to the
 2 payment of wages. Defendants shall pay the employer's portion of FICA. Defendants
 3 shall include a statement of payments and deductions and a W-2 form for this amount;
 4 and

5 b. A separate check in the amount of \$161,800 as compensatory damages payable
 6 to Ms. Parsons. Defendants will issue Ms. Parsons an IRS form 1099 for this payment.

7 c. Defendants shall transmit a copy of any checks made payable to Ms. Parsons,
 8 together with an accounting of employee deductions and employer contributions made, to
 9 the EEOC at the same time that payment is made to Ms. Parsons as described above to
 10 the EEOC at: (1) EEOC-SEFO_COMPLIANCE@eeoc.gov; and (2)
 11 SEFO_LCCA@eeoc.gov.
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 14 10. Defendants will not condition the receipt of monetary relief by requiring Ms.
 15 Parsons to: (a) maintain as confidential the facts and/or allegations underlying her charge, the
 16 EEOC's Complaint and the terms of this Decree; (b) waive her statutory right to file a future
 17 charge with any government agency; (c) agree to a non-disparagement and/or confidentiality
 18 agreement; (d) release any claims beyond the Title VII claims at issue in this action and which
 19 this Consent Decree resolves or (e) refrain from reapplying for a job with Defendants.
 20

21 V. INJUNCTIVE AND OTHER RELIEF

22 A. General Provisions

11. Defendants, their officers, agents, managers, supervisors, and human resource staff in Washington state, and all human resources/employee relations staff who provide advice and support to managers, supervisors and employees in Washington state, and their successors and assigns, are enjoined from engaging in practices that constitute discrimination in violation of Title VII based on an employee's sex or pregnancy.

12. During the duration of this Consent Decree, Defendants will provide prior written notice to any potential purchaser of their business(es) in Washington state, or a purchaser of all or a portion of either or both Defendants' assets in Washington state, and to any other potential successor, of the EEOC's lawsuit, the allegations raised in the EEOC's Complaint, and the existence and contents of this Consent Decree. In recognition of its obligations under Title VII, Defendants shall ensure that they have in place the policies set forth below.

B. Anti-Discrimination Policies

13. Defendants shall ensure that they have in place anti-discrimination policies and training for all management personnel, supervisors and employees in Washington state, and for all human resources/employee relations staff who provide advice and support to managers, supervisors and employees in Washington state, including the human resource/employee relations staff responsible for reviewing requests for work restrictions from employees in Washington state.

14. EEO Policies. Within sixty (60) days of the entry of this Consent Decree, Defendants shall ensure that they have in place written policies that apply to all management personnel, supervisors and employees in Washington state, and to all human resources/employee relations staff who provide advice and support to managers, supervisors and employees in Washington state that: (a) prohibit discrimination based on sex or pregnancy; (b) explain to

employees their rights and responsibilities under Title VII and the PDA; (c) describe the process by which an employee can file an internal complaint based on sex or pregnancy, and the general investigation framework to address such a complaint; and (d) periodically update these policies to reflect changes in anti-discrimination laws. The policies will state that they are promulgated at the direction of and with the endorsement by the highest level of Life Care management. These policies shall be provided to the EEOC for review and comment no later than thirty (30) days prior to implementation. Within fourteen (14) days of receipt, the EEOC will advise Defendants of any proposed changes.

15. Defendants' anti-discrimination policy will describe the process by which a Life Care employee can request an accommodation of a pregnancy-related work restriction under Title VII and the PDA, including, at a minimum, the type of information that an employee may submit to support her requested accommodation and the approval or denial decision will be made within ten (10) business days, absent extenuating circumstances. The policy will also explain or assure all employees that Life Care Centers will maintain all documentation related to requests for an accommodation of pregnancy related work restrictions and the disposition of each such request.

16. Complaint Procedures. Defendants will ensure that they have in place a process by which an employee who believes she has been discriminated against based on her sex or pregnancy, including denial of an accommodation of a pregnancy-related work restriction, can file an internal complaint, a procedure that includes (a) multiple points of contact through which an employee can file a complaint, (b) allowing complaints to be submitted anonymously or verbally in the primary language of the employee, without requiring the employee to submit a

1 written statement, (c) providing a method for documenting verbal complaints, (d) ensuring the
2 confidentiality of an employee who files such an internal complainant, and that of any other
3 victim or witness to the complaint to the extent possible, (e) absent extenuating circumstances,
4 providing that Defendants will begin the investigation within five (5) business days of receipt of
5 a complaint and complete the investigation within fourteen (14) business days, (f) ensuring that
6 Defendants will take prompt and appropriate action to correct the conduct upon determining that
7 discrimination has occurred, and (g) ensuring that Defendants will communicate to the employee
8 who files a non-anonymous internal complaint whether the complaint was substantiated and if
9 any action was taken within five (5) business days of completing the investigation of a
10 complaint. The policy will also explain or assure all employees that Life Care Centers will
11 maintain all documentation related to requests for an accommodation of pregnancy related work
12 restrictions and the disposition of each such request.
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14 17. Not later than sixty (60) days after entry of this Consent Decree, Defendants shall
15 make a written copy of their EEO policies available on an electronic portal accessible to all Life
16 Care employees. Defendants will also translate their written EEO policies into the primary
17 spoken language of any employee upon request. Defendants will ensure their EEO policies will
18 be available to every new employee hired or re-hired during the duration of this Decree.
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20 18. Policy Modifications. In the event that Defendants make any substantive
21 modifications to any of the policies identified in paragraphs 13 through 17 above during the
22 duration of the Decree, Defendants shall submit to the EEOC the proposed substantive
23 modifications no later than thirty (30) days prior to implementation. EEOC will notify
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1 Defendants within fourteen (14) days of receipt of the proposed substantive modifications if it
2 has any comments.

3
4 C. Equal Employment Opportunity Training

5 19. Not later than one hundred twenty (120) days after entry of this Consent Decree
6 and annually thereafter, Defendants shall provide one (1) hour of EEO training to all non-
7 supervisory, employees in Washington state that focuses on Title VII and the PDA. This anti-
8 discrimination training shall be developed by a third-party provider with expertise in anti-
9 discrimination matters and include, at a minimum, an overview of Title VII and the PDA with
10 special emphasis on employee rights and responsibilities in requesting an accommodation of a
11 pregnancy-related work restriction, employer obligations in responding to such requests for
12 reasonable accommodation, the interactive process, and the employer's ongoing obligation to
13 ensure the effectiveness of accommodations, if granted. The training shall include a specific
14 reference to sex and pregnancy discrimination and specific instruction regarding Life Care's EEO
15 policies and will include clear definitions and sample scenarios specifically related to
16 discrimination and work restrictions tailored to Defendants' workplace. The training shall also
17 include information about the different avenues by which a request for an accommodation of a
18 pregnancy-related work restriction may be made and if the request is denied, how to submit a
19 complaint internally with Defendants, and will include contact information for the EEOC.
20 Defendants shall ensure that the format of the training is web-based. In addition, Defendants
21 thereafter shall provide this training to new hires within thirty (30) days of the employee's hire
22 date.
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1 20. Not later than one hundred twenty (120) days after entry of this Consent Decree
2 and annually thereafter, Life Care shall provide ninety (90) minutes of in-person EEO training to
3 all management and supervisory employees in Washington state and for all human
4 resources/employee relations staff including the Human Resources Division Director who provide
5 advice and support on Title VII and PDA issues to managers, supervisors and employees in
6 Washington state, regarding Defendants' EEO policies, complaint and investigation process. The
7 training will inform each participant that he or she is responsible for knowing and complying with
8 of Defendants' policies and that failure to comply shall result in appropriate discipline up to and
9 including termination. The training shall also emphasize that managers and supervisors are
10 required to report any complaint regarding an accommodation request, and that failure to take such
11 action may result in disciplinary action. The training shall be for no less than ninety (90) minutes
12 for each year of this Consent Decree. In addition, Defendants thereafter shall provide this training
13 in video format of this manager training to employees newly hired or promoted into these positions
14 within thirty (30) days of the employee's hire or promotion date.
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16 21. The trainings described in paragraphs 19-20 shall be developed by Stoel Rives LLP
17 or another third party with established experience conducting anti-discrimination workplace
18 training. Defendants shall identify all proposed curriculum consultants for the trainings within
19 thirty (30) days of the entry of this Consent Decree. The EEOC will raise any objections to the
20 proposed curriculum consultants within fifteen (15) days. Defendants also shall provide the EEOC
21 with copies of all training materials no later than thirty (30) days prior to their use. The EEOC
22 will advise Defendants of any comments to proposed training materials within fourteen (14) days.
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22. All costs of training shall be borne by Defendants. Defendants shall notify the EEOC in writing of the completion of the training seminar and shall specify the names and job titles of the managers, supervisors and employees who participated in and completed the training. This information shall be provided as part of the annual reports required by Paragraphs 27-28 of this Consent Decree.

D. Non-Disclosure of Information, File Expungement and Neutral Reference

23. Defendants shall not disclose any information or make reference to any charge of discrimination or this lawsuit in responding to requests for information about Ms. Parsons' employment. Defendants shall expunge from its personnel records any information relating to Ms. Parsons' request for an accommodation of her pregnancy-related work restriction and Life Care's response. Those records will be preserved in a file separate from Ms. Parsons' personnel records. Consistent with Defendants' usual policies and practices regarding responding to requests for references for all former employees, Defendants shall only confirm Ms. Parsons' years of employment with Life Care and her position during her employment to any prospective employer.

E. Policies Designed to Promote Accountability

24. Defendants may impose discipline, up to and including termination of employment, upon any manager or supervisor in Washington state, and any human resources/employee relations staff who provided advice to such manager or supervisor in Washington state, who they determine has discriminated against an employee based on sex or pregnancy. In addition, Defendants shall inform managers and supervisors in Washington state of their obligation to report any complaint

1 based on sex or pregnancy for investigation, shall address any alleged discrimination that they
 2 observe in the workplace or after receiving notice of discrimination, and shall be warned that
 3 failure to take such action will result in disciplinary action.

4 25. Defendants shall hold each manager and supervisor in Washington state, and any
 5 human resources/employee relations staff who advises a manager or supervisor in Washington
 6 state, accountable for EEO enforcement and compliance.

7 F. Reporting

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 9 26. Defendants shall submit a report to the EEOC for each year of this Consent Decree.
 10 The first report shall be submitted to the EEOC twelve (12) months after the entry of this Consent
 11 Decree, and each successive report will be submitted annually thereafter until the expiration of this
 12 Consent Decree to the EEOC at: (1) EEOC-SEFO_COMPLIANCE@eeoc.gov; and (2)
 13 SEFO_LCCA@eeoc.gov.

14 27. Each report shall contain the following information and attachments:

15 a. A certification that Defendants:

- 16 1. Ensure that they have in place written EEO policies and posted a copy of its
 17 EEO policy as described in Paragraphs 13-18;
- 18 2. Complied with the training provisions enumerated in this Consent Decree
 19 in Paragraphs 19-22;
- 20 3. Enforced its policies and procedures to promote EEO accountability by
 21 managers and supervisors, as required by Paragraphs 24-25; and
- 22 4. Complied with all other provisions of this Consent Decree.

23 b. Copies of the following documents shall be included with each annual report
 24 submitted to the Seattle Filed Office of the EEOC:

- 25 1. A copy of Defendants' EEO policy maintained in accordance with the
 provisions of this Consent Decree.

2. A summary of all requests for or complaints of denials of pregnancy-related work restrictions made by employees in Washington state, the disposition of the request, and the reason for the disposition, along with the following information:
 - i. Name of the individual who requested or was denied a pregnancy-related work restriction and personal contact information, including the full address, email address and telephone numbers of the individual; and
 - ii. Name(s) and title of individual(s) who received, addressed, and resolved the request for or complaint of denial of a pregnancy-related work restriction accommodation.
3. A sign-in sheet or list of the names and job titles of each manager, supervisor and employee of Defendants who completed EEO training and the date they completed such training during the previous reporting period.

28. If applicable, Defendants shall submit a statement with its report to the EEOC specifying the areas of noncompliance, the reason for the noncompliance, and the steps that were or shall be taken to bring the company into compliance.

G. Notice Posting

29. Defendants shall conspicuously post a copy of the Notice attached as Exhibit 1 to this Consent Decree on a bulletin board at each Washington state facility where it posts employment related information for staff.

VI. ENFORCEMENT

30. The EEOC will give Defendants at least thirty (30) days notice of any alleged noncompliance with this Consent Decree before initiating any enforcement action under this Consent Decree. If Defendants have not attempted to remedy the alleged noncompliance or has not satisfied the EEOC that it has complied with this Consent Decree at the end of that thirty (30)

1 day period, the EEOC may apply to the Court for appropriate relief. The 30-day period following
2 the written notice shall be used by the EEOC and Defendants for good faith efforts to resolve the
3 dispute.

4 VII. RETENTION OF JURISDICTION

5 31. The United States District Court for the Western District of Washington at Seattle
6 shall retain jurisdiction over this matter for the duration of this Consent Decree.
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8 VIII. DURATION AND TERMINATION

9 32. This Consent Decree shall be in effect for three (3) years from the date of entry of
10 the Decree. If the EEOC petitions the Court for breach of this Consent Decree, and the Court finds
11 Defendants to be in violation of the terms of the Consent Decree, the Court may extend the duration
12 of this Consent Decree.
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15 Respectfully submitted this 13th day of December, 2019.
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17 BY: /s/ Roberta L. Steele

18 ROBERTA L. STEELE
19 Regional Attorney

20 JOHN F. STANLEY
21 Supervisory Trial Attorney

22 DAMIEN A. LEE
23 Senior Trial Attorney

24 Attorneys for Plaintiff Equal Employment Opportunity Commission
25

1 BY: /s/ Adam S. Belzberg

2 Adam S. Belzberg
3 Amanda J. Hailey
4 Stoel Rives LLP
5 600 University Street, Suite 3600
6 Seattle, WA 98101
7 Telephone: (206) 624-0900

8 Attorneys for Life Care
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ORDER APPROVING CONSENT DECREE

The Court, having considered the foregoing stipulated agreement of the parties, HEREBY ORDERS THAT the Consent Decree be, and the same hereby is, approved as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees. The Court retains jurisdiction of this matter for purposes of enforcing the Consent Decree approved herein.

DATED this 23rd day of December, 2019.

A handwritten signature in black ink, reading "Richard A. Jones", written over a horizontal line.

The Honorable Richard A. Jones
United States District Judge